

SPCC Settlement Issues

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March 31, 2004

SPCC Settlement Issues

- ◆ Integrity Testing
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- ◆ Security
- ◆ Cost
- ◆ Produced Waters
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Integrity Testing

Integrity testing of containers is required by §112.8(c)(6).

Summary: Test via visual examination plus a non-destructive evaluation (NDE) testing technique on a regular schedule and perform frequent inspections of the outside of the containers for signs of deterioration, discharges, or accumulation of oil inside diked areas.

Equivalent Environmental Protection:

- ❖ Requirement subject to environmental equivalence provision at §112.7(a)(2). In the settlement agreement, EPA states its intention to provide guidance regarding environmental equivalence as summarized below. In settlement, Plaintiffs asked whether, for shop-built containers, visual inspection plus certain actions to ensure that the containers are not in contact with the soil would likely be considered to provide “equivalent environmental protection” to visual inspection plus another form of testing.

Integrity Testing (cont.)

- ◆ Specifically, the Agency generally believes that for well designed shop-built containers with a shell capacity of 30,000 gallons or under, combining appropriate visual inspection with the measures described below would generally provide environmental protection equivalent to that provided by visual inspection plus another form of testing.

Integrity Testing (cont.)

- ◆ We generally believe that visual inspection plus elevation of a shop-built container in a manner that decreases corrosion potential (as compared to a container in contact with soil) and makes all sides of the container, including the bottom, visible during inspection (e.g., where the containers are mounted on structural supports, saddles, or some forms of grillage) would be considered “equivalent.”
- ◆ In a similar vein, we generally believe an approach that combines visual inspection with placement of a barrier between the container and the ground, designed and operated in a way that ensures that any leaks are immediately detected, to be considered “equivalent.” For example, we believe it would generally provide equivalent environmental protection to place a shop-built container on an adequately designed, maintained, and inspected synthetic liner.

Integrity Testing (cont.)

- ◆ In determining the appropriate SPCC plan requirements for visual inspection of containers managed as described above, we suggest that the professional engineer (PE) begin by consulting appropriate industry standards, such as those listed in Steel Tank Institute Standard SP001 and American Petroleum Institute Standard 653.
- ◆ Where a facility is considering the use of the above approaches for containers that are currently resting on the ground, or have otherwise been managed in a way that presents risks for corrosion or are showing signs of corrosion, we recommend the facility first evaluate the condition of the container in accordance with good engineering practices, including seeking expert advice, where appropriate.

Integrity Testing (cont.)

- ❖ Determinations of “equivalent environmental protection” must be implemented and documented in accordance with 40 CFR §112.7(a)(2). PE’s may decide to recommend NDE testing for reasons other than compliance with the SPCC rule (e.g., to protect an owner’s investment in equipment or to meet other local, state or federal requirements).
- ❖ **Future Guidance:** The Agency intends in the near future to develop guidance on appropriate visual inspection of shop-built containers. We intend to address issues such as inspection frequency, scope (e.g., internal and /or external), training and/or qualifications of persons conducting the inspections, and other measures that may be appropriate at a given site (e.g., measures to detect the presence of water in a container). We expect to use the referenced industry standards in developing such guidance.

Loading Rack

- ◆ Regarding preamble language at 67 FR 47110 (July 17, 2002), the Agency did not intend to interpret the term “loading/unloading rack.”
- ◆ Instead, the Agency was responding generally to a variety of comments each asking that their specific situation not be subject to the 40 CFR §112.7(h) requirements.
- ◆ Thus, the emphasized language above was meant to be a rejection of pleas for exclusions of specific facilities, not an interpretation of the term “loading/unloading rack.”

Loading Rack (cont.)

- ◆ The Agency does not interpret §112.7(h) to apply beyond activities and/or equipment associated with tank car and tank truck loading/unloading racks.
- ◆ Therefore, loading and unloading activities that take place beyond the rack area would not be subject to the requirements of 40 CFR §112.7(h) (but, of course, would be subject, where applicable, to the general containment requirements of 40 CFR §112.7(c)).

Loading Rack (cont.)

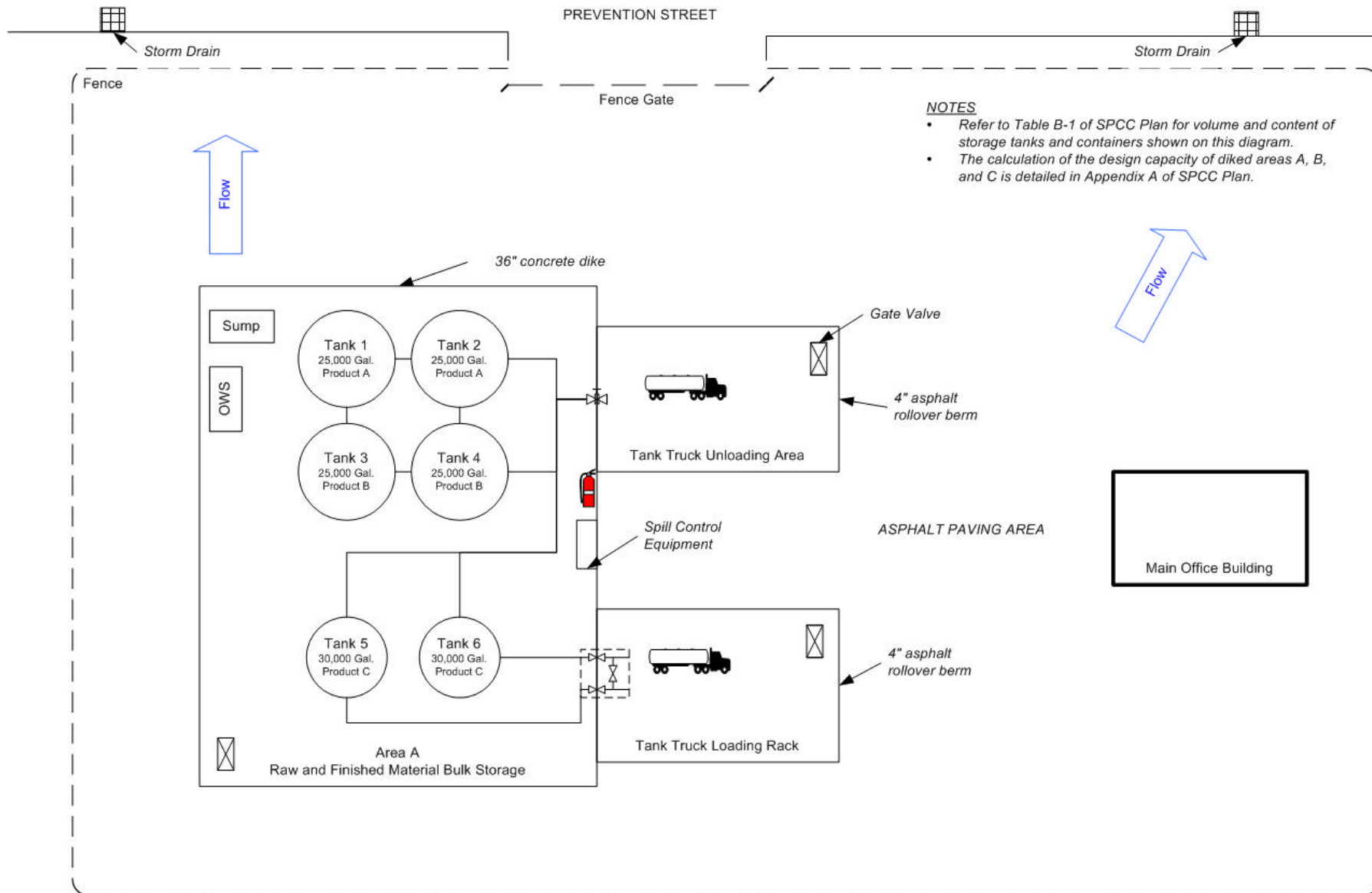
- ◆ We interpret §112.7(h) only to apply to loading and unloading “racks.” Under this interpretation, if a facility does not have a loading or unloading “rack,” §112.7(h) does not apply.
- ◆ The Agency did not mean to imply that any particular category of facilities, such as production facilities, are likely to have loading or unloading racks present.

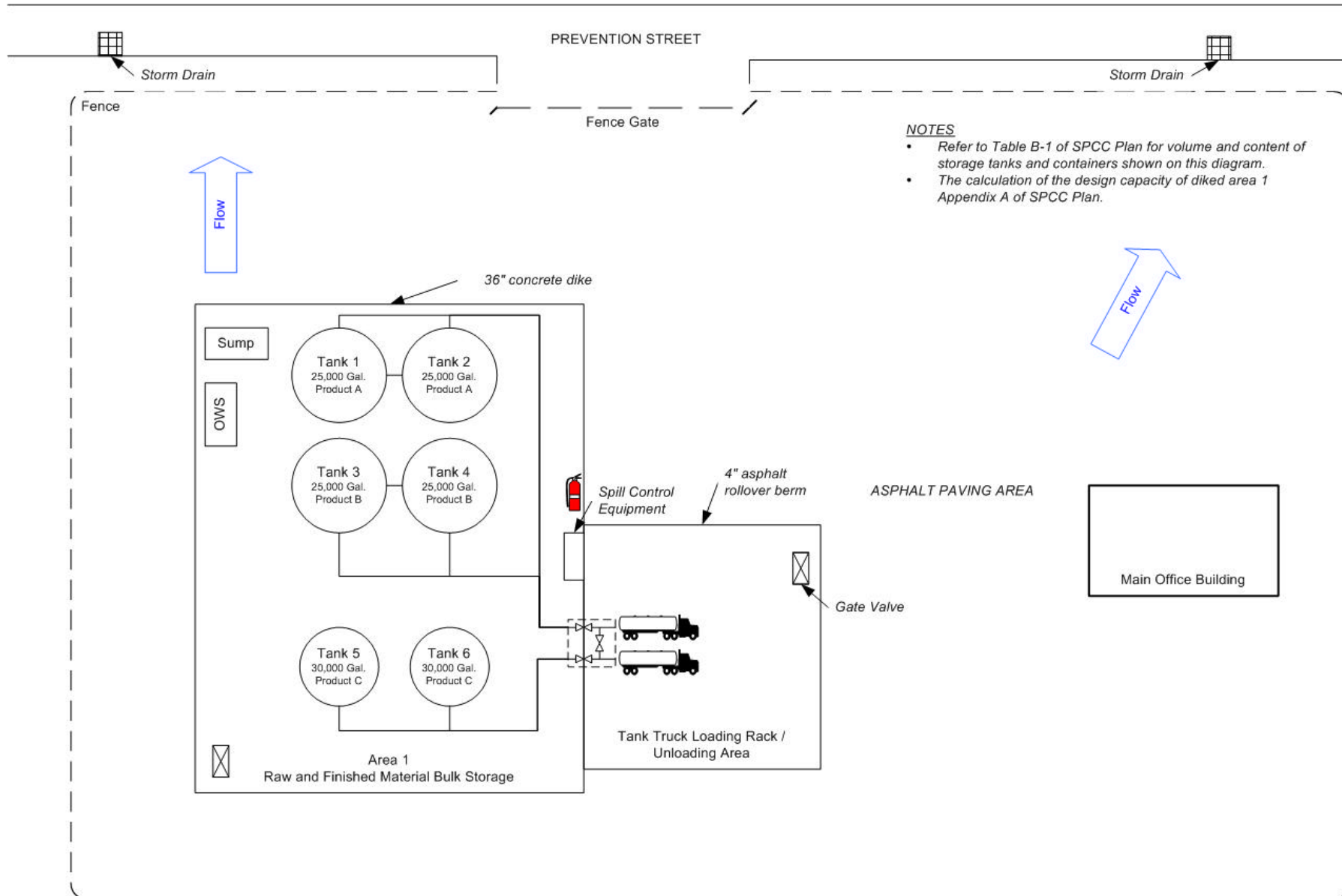
Loading Rack (cont.)

- ◆ Plaintiffs also challenged a change in the language of §112.7(h) (formerly codified as §112.7(e)(4)). Specifically, EPA substituted the phrase “loading/unloading area drainage” for the phrase “rack area drainage” in paragraph §112.7(h)(1).
- ◆ The Agency does not interpret this change as expanding the requirements of that section beyond activities associated with tank car and tank truck loading/unloading racks.

Loading Rack (cont.)

- ◆ The Agency believes the change simply serves to make the rule easier to understand. Previously, the rule stated that a facility must compensate for lack of specified drainage systems at the “*rack area*” with “a quick drainage system for tank car or tank truck *loading and unloading areas*.” Obviously, the scope of these two emphasized terms was always meant to be identical, and the challenged language change only makes that clearer.





Security

- ◆ Security requirements are set forth at §112.7(g).
- ◆ Plaintiffs have asked whether two specific sets of circumstances would likely be determined to provide “equivalent environmental protection” to this requirement.
 - Option 1: The first is where the area of the facility directly involved in the handling, processing and storage of oil is adequately fenced.
 - Option 2: The second is where the facility is equipped with a “pump house” or “pump shack,” which contains, among other appropriate things, a master disconnect switch from which all power to pumps and containers is cut off when the facility is unattended.

Security (cont.)

Adequate Fencing:

- ❖ Option 1: It is our view that, as a general matter, adequately fencing all discrete areas directly involved in the handling, processing and storage of oil would provide equivalent environmental protection to fencing the entire footprint of the facility, since it is potential for harm to this equipment that poses the risk addressed by the fencing requirement.
- ❖ Option 2: This approach would appear to generally provide environmental equivalent protection to fencing for risks associated with the potential for unauthorized access to pumping equipment; however, it does not appear to provide protection equivalent to fencing as it relates to risks to containers, piping and appurtenances not associated with the pumps at the facility.

Cost & Impracticability

- ◆ Plaintiffs challenged statements made in the preamble to the SPCC amendments concerning the meaning of “impracticability” under 40 CFR §112.7(d) [see 67 FR 47104].
- ◆ The Agency did not intend to opine broadly on the role of costs in determinations of impracticability. Instead, the Agency intended to make the narrower point that secondary containment may not be considered impracticable solely because a contingency plan is cheaper.

Cost & Impracticability (cont.)

- ◆ The Agency did not intend to foreclose the consideration of other pertinent factors. In fact, in the response-to-comment document for the SPCC amendments rulemaking, the Agency stated that “. . . for certain facilities, secondary containment may not be practicable because of geographic limitations, local zoning ordinances, fire prevention standards, or other good engineering practice reasons.”

Produced Waters

- ◆ Produced water is not subject to the wastewater exemption set forth at 40 CFR §112.1(d)(6).

Produced Waters (cont.)

Dry Gas Facilities

- ◆ The Agency has been asked whether produced water tanks at dry gas production facilities are eligible for the SPCC rule's wastewater treatment exemption at 40 CFR §112.1(d)(6).
 - A dry gas production facility is a facility that produces natural gas from a well (or wells) from which it does not also produce condensate or crude oil that can be drawn off the tanks, containers or other production equipment at the facility.

Produced Waters (cont.)

Dry Gas Facilities

- ◆ It is our view that a dry gas production facility (as described above) would not be excluded from the wastewater treatment exemption.

Produced Waters (cont.)

Dry Gas Facilities

- ◆ In verifying that a particular gas facility is not an “oil production, oil recovery, or oil recycling facility,” the Agency plans to consider, as appropriate, evidence at the facility pertaining to
 - Presence or absence of condensate or crude oil that can be drawn off the tanks,
 - Containers or other production equipment at the facility,
 - Pertinent facility test data and reports (e.g., flow tests, daily gauge reports, royalty reports or other production reports required by state or federal regulatory bodies).

Produced Waters (cont.)

“Facility” and “Production facility”

- ◆ In the July 2002 SPCC amendments, the Agency promulgated definitions of “facility” and “production facility.”
- ◆ These definitions, which appear in 40 CFR §112.2, apply “for the purposes of” Part 112.
- ◆ The Agency has been asked which of these definitions governs the term “facility” as it is used in 40 CFR §112.20(f)(1) when determining applicability of the Facility Response Plan regulation for oil production facilities.

Produced Waters (cont.)

- ◆ 40 CFR §112.20(f)(1) sets criteria for determining whether a “*facility* could, because of its location, reasonably be expected to cause substantial harm to the environment ...” (emphasis added). It is the Agency’s view that, it is the definition of “facility” in 40 CFR §112.2 that governs the meaning of “facility” as it is used in 40 CFR §112.20(f)(1), regardless of the specific type of facility at issue.

Navigable Waters

- ◆ The complaint alleged rulemaking deficiencies pertaining to the updated definition of “navigable waters.”
- ◆ The issue of navigable waters was not resolved in the settlement and it currently appears that it will be litigated by the parties.
 - DC District Court to rule on this issue.

Navigable Waters (cont.)

- ◆ Agency position on navigable waters for the purpose of SPCC implementation:
 - Consistent with Jan. 2003 Guidance*, EPA will enforce the navigable waters definition in the SPCC rule, **but will not rely on the migratory bird rule as the basis for jurisdiction over non-navigable, isolated, intrastate waters.**
- ◆ EPA will not commence a rulemaking to redefine “navigable waters.”

* Guidance published January 15, 2003 (68 FR 1995)

Questions?



The EPA Oil Program Website

<http://www.epa.gov/oilspill>

The RCRA, Superfund & EPCRA Call Center

1-800-424-9346

